Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

	Docket Number (Optional) 2003P16318

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number 10/577,589	Filed April 27, 2006
on _____ Signature_____	First Named Inventor Andreas Schmidt	
Typed or printed name _____	Art Unit 2431	Examiner Michael R. Vaughan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
    See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
    (Form PTO/SB/96)

☐ attorney or agent of record.
    Registration number _____.

☑ attorney or agent acting under 37 CFR 1.34.

    Registration number if acting under 37 CFR 1.34   37,237

/Kerry P. Sisselman/
_____
Signature

Kerry P. Sisselman
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Typed or printed name

954-925-1100
_____
Telephone number

April 14, 2010
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑   *Total of ____1____ forms are submitted.

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Appellants' claims are believed to be patentable over the cited art, as follows.

I. **None of the references cited in the Office Action teach or suggest, among other limitation of Appellants' claims, a data provisioning component transmitting information relating to the result of a usability check to a switching component.**

Appellants' independent claim 22 recites, among other limitations:

transmitting, from the data provisioning component to the switching component, information relating to a result of the check on the usability of the encrypted user data object to be transmitted for the first telecommunications terminal;

Appellants' independent claim 46 recites a similar limitation, among others. However, among other limitations, the cited prior art does not teach or suggest the above-quoted limitation of Appellants' claims.

More particularly, pages 3 – 4 of the final Office Action point to page 6 of the **MOSTAFA** reference, lines 21 – 23 and page 19 of the **MOSTAFA** reference, line 5, as allegedly teaching the above-limitation of Appellants' claims. Appellants respectfully disagree.

Rather, the passages of the **MOSTAFA** reference cited in the Office Action are **silent** about any relevant communication **between the MMS server** of **MOSTAFA** (analogized in the Office Action to Appellants' claimed data provisioning component) **and the MMS rely A** of **MOSTAFA** (analogized in the Office Action to Appellants' claimed switching component). In contrast thereto, Appellants' claims require, among other limitations, **a data provisioning component transmitting information relating to the result of a usability check to a switching component.** As such, the **MOSTAFA** reference fails to teach the above-limitation of Appellants' claims. The further references cited in the Office Action do not cure this deficiency of the **MOSTAFA** reference.

II. Encrypting the multimedia message of MOSTAFA, as taught in CHANG, would render the modified device inoperable and unsatisfactory for its intended purpose, in contradiction to M.P.E.P. § 2143.01(V).

Appellants' claims 22 and 46 require that the user data object being checked for usability by the first telecommunications terminal is an encrypted user data object, the content of which is inaccessible to the switching component, due to the encryption. For example, claims 22 and 46 recite, among other limitations:

> …, the switching component **not having access to a content** of the encrypted user data object due to the encryption;

Page 4 of the Office Action acknowledges that **MOSTAFA** does not disclose that the data object is encrypted, but cites the **CHANG** reference as allegedly teaching encryption of a data object, when taken in combination with **MOSTAFA**. However, the teachings of **CHANG** are not combinable with **MOSTAFA** in the manner suggested in the Office Action, because such a combination impermissibly destroys the operability of the **MOSTAFA** reference.

More particularly, M.P.E.P. § 2143.01(V) states, in part:

> V.   THE **PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE**
>
> If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

Thus, M.P.E.P. § 2143.01(V) states that if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. Modifying the teachings of **MOSTAFA** to include the encryption of **CHANG** would render the device of **MOSTAFA** unsatisfactory for its intended purpose, and, in fact, completely inoperable.

More particularly, without further differentiation employing the encryption of **CHANG** on the multimedia message of **MOSTAFA** would prevent the relays of **MOSTAFA** from having access to the addressing information identifying the intended recipient of the message, which addressing information is sent as part of the media content of the message of **MOSTAFA**. See, for example, pg. 17 of **MOSTAFA**, lines 5-8 and pg. 7 of **MOSTAFA**, lines 6-7, which describe that, in **MOSTAFA**, **the addressing information for the message recipient** <u>**is encapsulated**</u> <u>**within the multimedia message**</u>. Therefore, if the multimedia message of **MOSTAFA** were encrypted, as suggested in the Office Action, the relays of **MOSTAFA** would not be able to determine the address of the intended recipient of the encrypted multimedia message. Consequently, the relays of **MOSTAFA** would <u>**not**</u> be able to address the intended recipient, thus preventing operation of the device taught in Mostafa. Thus, modifying the teachings of **MOSTAFA** to encrypt the multimedia message in accordance with the teachings of **CHANG** renders the device of **MOSTAFA** unsatisfactory for its intended purpose and completely inoperable. Thus, under M.P.E.P. § 2143.01(V), Appellants' claims are <u>**not**</u> obvious over the **MOSTAFA** reference, alone or in any permissible combination with the **CHANG** reference. Put quite simply, modifying the teachings of **MOSTAFA** to encrypt the multimedia messages would destroy the operability of the **MOSTAFA** reference. Further, nothing in the **MOSTAFA** or **CHANG** references would teach or suggest excluding the addressing information from the encapsulated multimedia message specifically taught in **MOSTAFA**. Rather, the exclusion of this information from the multimedia message of **MOSTAFA** would be directly contrary to the teachings of the **MOSTAFA** reference and would clearly only be suggested as the result of impermissible hindsight reconstruction of Appellants' claimed invention.

For the foregoing reasons, among others, the **MOSTAFA** and **CHANG** references are not combinable to render obvious Appellants' claimed invention.

III. The combination of MOSTAFA and KELLERMAN suggested in the Office Action does not teach, but rather, teaches away from,

> Appellants' claimed invention requiring, among other things, the
> transmission from the data provisioning component to the
> switching component of information relating to a usability
> check.

Appellants' claims additionally require, among other limitations of
Appellants' claims: 1) that the switching component transmits a
"request" for checking the usability of the user data object
"together with" the "determined" profiles of the capabilities of the
first telecommunications terminal to the data provisioning
component; **and** 2) that the data provisioning component transmits
information relating to the usability check to the switching
component. Pages 4 – 5 of the Office Action acknowledge that
MOSTAFA does not disclose transmitting of a request, by the
switching component, together with the "determined" profiles of the
capabilities of the first telecommunications terminal to the data
provisioning component. Instead, the Office Action points to the
KELLERMAN reference as allegedly disclosing this feature, in
combination with **MOSTAFA.** Appellants respectfully disagree.

More particularly, the **KELLERMAN** reference discloses sending a
profile to a server, which, in turn, **reformats (i.e., transcodes)
the content of a media channel based on a profile.** In **KELLERMAN,**
the server then **sends the transcoded content** to the end-user device
which consumes (uses) the content. See, for example, col. 6 of
KELLERMAN, lines 57-63. However, if the server of **KELLERMAN always
reformats the media into a format usable by the end-user device, per
col. 6 of KELLERMAN,** there is no need for a further usability check
to be provided, or for informing the switching component about the
results of a usability check, as required by Appellants' claims.
Rather, all media would be usable by the end-user, since **KELLERMAN**
teaches reformatting the media so as to be usable by the end-user
prior to sending it.

Thus, a combination of **MOSTAFA** and **KELLERMAN,** as suggested in the
Office Action, would teach a person of ordinary skill in this art
away from Appellants' claimed invention which requires: 1) that the
switching component transmits a "request" for checking the usability

of the user data object "together with" the "determined" profiles of the capabilities of the first telecommunications terminal to the data provisioning component; **and** 2) that the data provisioning component transmits information relating to the usability check to the switching component. Such a usability check has been obviated by the reformatting performed in the **KELLERMAN** reference. As such, Appellants' claimed invention is not rendered obvious by the combination of **MOSTAFA** and **KELLERMAN.**

IV. Appellants' dependent claims even further distinguish the claimed invention over the cited art.

With regard to claims 23, 24, 28, Appellants note that encryption of the multimedia message of **MOSTAFA** is incompatible with the operability of the system of **MOSTAFA,** as discussed above. Therefore, **MOSTAFA,** alone or in any combination, cannot be said to teach or suggest an <u>encrypted</u> user data object.

With regard to claim 27, the Office Action points to page 20 of **MOSTAFA,** line 11 as allegedly disclosing an address containing a URL. However, the URL mentioned in the cited portion of **MOSTAFA,** belongs to the notification (see page 20, line 5-11) <u>formed by the MMS rely</u> (see page 19, lines 16-21). The claim wording, however, requires that the URL be part of the address contained in the reference that is <u>received</u> by the switching component.

Further, with regard to claim 29, **MOSTAFA** fails to teach or suggest, among other things, that the information to the switching component contains a pointer to a data provisioning component from which a suitable user data object can be requested. Actually, **MOSTAFA** teaches that the translation of the component is carried out by that network entity that also carries out the other method steps. See, for example, pg. 6 of **MOSTAFA,** lines 15-25 and pg. 7 of **MOSTAFA,** lines 21-28. According to page 25 of **MOSTAFA,** lines 30-31, this network entity is the recipient MMS relay. However, it would be senseless to provide a pointer to the recipient MMS relay pointing to itself.